



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL OCEAN SERVICE
Silver Spring, Maryland 20910

DEC 16 2003

Governor Craig R. Benson
State of New Hampshire
Office of the Governor
107 North Main Street
State House - Rm. 208
Concord, New Hampshire 03301

Dear Governor Benson:

The Office of Ocean and Coastal Resource Management has completed the approvability review of the inland coastal boundary expansion of New Hampshire's Coastal Program (NHCP) amendment request pursuant to section 306 (d) of the Coastal Zone Management Act of 1972 (CZMA). After an extensive review of the inland boundary expansion, I find that the boundary expansion, as described in the Final Findings of Approvability, meets all requirements of the CZMA. Therefore, I approve the incorporation of the inland coastal boundary expansion into the NHCP.

The enclosed Final Findings of Approvability provide details on how the boundary expansion adequately addresses the amendment requirements as described in 15 CFR part 923.

Federal approval of the New Hampshire inland boundary expansion will be noticed in the *Federal Register* as soon as possible. The notice will indicate that Federal consistency will now apply to the expanded New Hampshire inland coastal boundary.

In approving this amendment, we recognize the hard work and effort of your staff in developing this amendment. We commend the State for this challenging effort and know that this amendment will have a positive impact in the implementation of the NHCP.

Please contact Bill O'Beirne of my staff at (301) 713-3155 extension 160, if you have any comments or questions on the approval of the amendment or the enclosed materials.

Sincerely

Richard W. Spinrad, Ph.D.
Assistant Administrator

Enclosure

cc: Jack Ruderman, w/encl.
Brian Mazerski, w/encl.



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New Hampshire Coastal Program

Amendment No. 2

Inclusion of the Expansion of the Inland Coastal Boundary
into the
New Hampshire Coastal Program

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FINAL FINDINGS OF APPROVABILITY

Expansion of Inland Coastal Boundary Amendment Request to the New Hampshire Coastal Program

INTRODUCTION

The Assistant Administrator for National Ocean Services (NOS), National Oceanic and Atmospheric Administration (NOAA), on behalf of the Secretary of Commerce, approved the New Hampshire Coastal Program (NHCP) in two segments. The ocean and harbor segment received Federal approval in May of 1982. The original boundary covered New Hampshire's Atlantic shoreline, Portsmouth Harbor, and the Hampton estuary.

In September 1988, major changes to the NHCP as well as the second boundary segment received Federal approval. The geographic scope of NHCP was amended to cover the entire tidal extent of New Hampshire's waters - the Great Bay and its tributaries. Approximately 131 miles of tidal shoreline in and around Great Bay, Little Bay and the tidal rivers were incorporated into the NHCP.

In an evaluation findings for the NHCP dated September 28, 2000, the Office of Ocean and Coastal Resource Management (OCRM) made a recommendation for the NHCP to explore the opportunities and possibilities of an expanded coastal boundary. OCRM noted the limitations that the existing boundary imposed on program implementation and NHCP leadership in resource management. Resource issues outside the previous coastal boundary were not managed by the NHCP, nor could they be funded with CZMA funds. The State began the challenging effort of expanding the inland coastal boundary.

On February 28, 2003, the Governor of New Hampshire submitted a request to expand the inland coastal boundary of the NHCP to include the State's 17 coastal municipalities. This change would encompass the entire jurisdiction of the municipalities, including Dover, Durham, Exeter, Greenland, Hampton, Hampton Falls, Madbury, New Castle, Newfields, Newington, Newmarket, North Hampton, Portsmouth, Rollinsford, Rye, Seabrook, and Stratham.

In accordance with the Office of Ocean and Coastal Resource Management (OCRM) amendment procedures (15 CFR 923.82), OCRM made a preliminary determination that the NHCP, as amended by the expansion of the inland coastal boundary, would still constitute an approvable program, and that the procedural requirements of Section 306(d) of the Coastal Zone Management Act (CZMA) had been met. In accordance with these requirements, OCRM prepared an Environmental Assessment (EA),

including the Preliminary Findings of Approvability. The EA resulted in a Findings of No Significant Impact (FONSI). OCRM determined that the NHCP amendment request was approvable.

A Notice of Availability was published in the *Federal Register* on October 23, 2003 (Volume 68, Number 205) and initiated a 30-day public comment period.

OCRM received no comment letters on the EA or on the Preliminary Findings of Approvability.

FINAL FINDINGS

1. Uses subject to management (15 CFR 923.80 (d)(1))

The NHCP definition of permissible land and water uses with direct and significant impacts on the NH coastal resources will not change with the expansion of the inland coastal boundary. The boundary expansion does not alter the existing types of land or water uses or activities that are currently subject to the management program, however, will increase the geographic scope of the NHCP.

The 16 coastal enforceable policies governing uses subject to the NHCP are from existing state laws which are currently enforced by state agencies on a statewide or watershed basis. Therefore, the uses in the expanded coastal inland boundary are already subject to these statewide policies and will not be subject to any additional state laws or regulations. However projects within the expanded inland boundary requiring a federal license or permit or receive federal funding will be subject to NHCP's federal consistency review procedures.

2. Special management areas (15 CFR 923.80 (d)(2))

The NHCP process for designating and managing special management areas for preservation or restoration; for energy facility planning; and, for regional land and water uses for regional benefits will not change with the expansion of the inland boundary. The NHCP's approach to the designation and management of special management areas is described in the NHCP/FEIS, beginning on page 8-40 and was found to be approvable by the Assistant Administrator of NOS in 1988.

The inland boundary expansion will not eliminate any areas of particular concerns (APC), areas of preservation or restoration (APR), or the manner in which these areas are designated, nor will it change the procedure for siting energy facilities.

3. Boundaries (15 CFR 923.80 (d)(3))

There are four elements to a state's coastal zone boundary: 1) the inland boundary; 2) the seaward boundary; 3) areas excluded from the boundary; and, 4) interstate boundary. Since this amendment expands the inland boundary, the Findings will only discuss the expansion of the inland coastal boundary. Before the amendment can be approved, OCRM must determine that the State's inland coastal boundary, if changed, will continue to include (as defined in 15 CFR 923.31(a)):

(A) Those areas the management of which is necessary to control uses which have direct and significant impacts on coastal waters, or are likely to be affected by or vulnerable to sea level rise, pursuant to section 923.11 of these regulations (see section 923.31 (a)(1));

(B) Those special management areas identified pursuant to section 923.21 (see section 923.31 (a)(2));

(C) Waters under saline influence - water containing a significant quantity of seawater, as defined by and uniformly applied by the State (see section 923.31 (a)(3));

(D) Salt marshes and wetlands - Areas subject to regular inundation of tidal salt (or Great Lakes) waters which contain marsh flora typical of the region (see section 923.31 (a)(4));

(E) Beaches - The area affected by wave action directly from the sea (see section 923.31 (a)(5));

(F) Transitional and intertidal areas (see section 923.31 (a)(6));

(G) Islands (see section 923.31 (a)(7)); and,

(H) The inland boundary must be presented in a manner that is clear and exact enough to permit determination of whether property or an activity is located within the management area (see section 923.31 (a)(8)).

The boundary will revise the existing inland boundary definition as found on pages 2-1 to 2-3 of the NCHP Program Document and Final Environmental Impact Statement dated July 1988. Specifically, the first tier occurs along the Atlantic Ocean, and Piscataqua River to a location on Dover Point opposite the outlet of Stacey Creek on the Maine Shore, and in most areas of the Great Bay. It is 1,000 feet inland from mean high water to the limit of the Wetlands Board (Bureaus) jurisdiction, which extends 3 ½ feet above the mean high water, whichever one is further inland. The boundary around

Great and Little Bays extends inland to identifiable features, roads or railroad tracks, which are in most cases more than 1,000 feet inland and effectively separate that shoreland from island areas. The federally owned land at Pease Air Force Base in Newington is excluded from the coastal zone.

The second tier is considered to have less direct influence on the coastal waters. It includes the following tidal rivers: the upper Piscataqua (from Dover Point), the Cocheco, Salmon Falls, Bellamy, Oyster, Lamprey, Squamscott, and Winnicutt, to the limit of tidal action and adjacent areas inland to the limit of the Wetlands Board (Bureau) jurisdiction, which extends 3 ½ feet above mean high water.

Expanding the NHCP's inland coastal boundary will change the State's coastal boundary from delineating the boundary by a two-tier geographical system related to distance from coastal water bodies, to encompassing the entire jurisdiction of coastal municipalities. With this expansion, the coastal boundary will now be coterminous with the 17 coastal municipalities boundaries, including Dover, Durham, Exeter, Greenland, Hampton, Hampton Falls, Madbury, New Castle, Newfields, Newington, Newmarket, North Hampton, Portsmouth, Rollinsford, Rye, Seabrook and Stratham. The NHCP seaward boundary remains the same.

Making the boundary coincide with the 17 coastal municipalities, will eliminate any existing confusion regarding the exact location of the NHCP jurisdiction. Clearer definition of the inland boundary will prevent debate of this issue and will provide greater predictability to management of coastal resources. An expanded coastal boundary will provide a more consistent approach for state and Federal activities in the coastal area impacting coastal resources and expand funding opportunities that can positively influence coastal resources. The State will also be able to use CZMA funds to support enhanced administration, monitoring, and enforcement of the Coastal Nonpoint Pollution Control Program authorities in the expanded areas. Funding will be available to support assistance to local governments to enhance local land use planning in the entire area of the 17 coastal municipalities and to help management programs and activities that advance the NHCP's goals and objectives consistent with CZMA requirements. Finally, NHCP program authorities could more easily be used to review federal or federally permitted activities to ensure consistency with NHCP program requirements.

The new coastal boundary area will not be subject to any additional state laws or regulations as a result of the expanded coastal area. The NHCP's 16 coastal policies, the state agencies that enforce these policies, and the enforcement abilities of the state agencies will not change as a result of the coastal boundary expansion. The number of state or local permits that are presently required for development and construction projects would also remain the same.

4. Authorities and organization (15 CFR 923.80 (d)(4))

The expansion of the inland coastal boundary has no effect on the program authorities or organizational structure of the NHCP. The program authorities remain the 16 coastal policies which are based entirely from existing state laws. Policy # 13 was revised to recognize the oversight of existing over the water structures. NOAA approved this revision in September 2003.

5. Coordination, public involvement and the national interest
(15 CFR 923.80 (d)(5))

The expansion of the inland boundary does not affect procedures for considering the national interest in the planning for and siting of particular facilities. The description of the national interest is described in the NHPC/FEIS, beginning on page 8-2 and was found to be approvable by the Assistant Administrator of NOS in 1988.

6. The following procedure requirements of Section 306 (e) of the CZMA have been met:

(A) The State has promptly notified the Assistant Administrator of the proposed amendment and submitted for the Secretary's approval.

(B) Within 30 days after the Secretary received the proposed amendment, the Secretary has found it necessary to extend the review of the amendment.

7. The following procedure requirements of Section 923 subpart H have been met:

(A) The State has developed the amendment with the opportunity for full participation by local governments, and interstate, regional and areawide agencies within the coastal zone.

(B) The Governor has designated a single State agency to administer the CZM program.

The inland boundary expansion will not change how the NHCP allows for public involvement or coordination with all relevant parties. Notification of the proposed boundary expansion was sent to both regional planning commissions, all 17 coastal municipalities and all the affected State and Federal government agencies. All 17 municipalities were supportive of revising the boundary to expand coverage of the NHCP's authority and the associated benefits to the communities.

A brief information flyer was sent to approximately 240 local non-government organizations, university contacts, and citizens as a reminder of the expanded boundary change and of the date of the public hearing. Individual meetings between NHCP and municipalities were held, informational articles were published in the local seacoast newspaper, in the *Tidelines* (Winter 2002) and in the bimonthly newsletter, *State Planning News* (Dec 02/ Jan 03).

The NHCP held a public hearing on December 11, 2002, in Newington, New Hampshire to allow any member of the public the opportunity to comment, to ask questions, and/or to discuss the effects on the proposed inclusion of the expansion of the inland coastal boundary into the Federally approved NHCP. Notice of the hearing was placed in the *Portsmouth Herald* on November 7, 2002 and in the local *Seacoast on-line* newspapers. The public was invited to comment in writing, as well. The record of the State public hearing fulfills the requirements of 15 CFR 923.81.

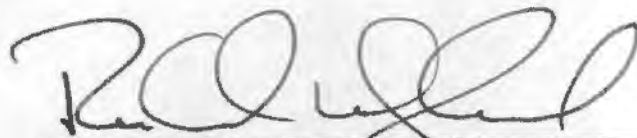
On February 28, 2003, Governor Craig R. Benson reviewed, signed and submitted the proposed amendment to OCRM for approval.

8. National Environmental Policy Act (NEPA) Requirements

In accordance with NEPA regulations, OCRM has prepared an Environmental Assessment (EA) on the expansion of the NH inland coastal boundary. The EA provides the basis for these Findings of Approvability.

CONCLUSION

I issue these findings and make a final determination that the New Hampshire Coastal Program, as amended by the expansion of the inland coastal boundary, still constitutes an approvable program and that procedural requirements of the CZMA and its implementing regulations have been met. Having made these findings, I approve this amendment effective 16 DECEMBER, 2003.



Richard W. Spinrad, Ph.D.
Assistant Administrator
for Ocean Services and Coastal Zone Management,
National Oceanic and Atmospheric Administration